

DD Network
Publication

IDEA

A Parent's Guide



What parents need to know about their rights in obtaining a free and appropriate education for a child with a disability.



Quality education, an 'idea' worth pursuing

It is always a good idea to begin at the beginning.

For children with disabilities and their parents, a quality education begins with an "idea"...well, more like IDEA – the Individuals with Disabilities Education Act.

What, specifically, is IDEA? It's a federal law which mandates a "free and appropriate education" for all children with disabilities. Enacted by Congress in 1975, IDEA requires that children with disabilities (ages 3-21) be provided with full access to an education that:

- 1) Is specifically tailored to meet their unique needs, and
- 2) Is provided in the least restrictive environment.

Simply put, the idea is that education is every child's right. Children with disabilities are no exception.

What more do parents of school-age children with disabilities need to know about IDEA? To begin, parents need to know the process is, by law, parent-driven. IDEA empowers parents to become educational advocates for their children.

They need to understand their rights *and* their responsibilities under IDEA. Because parents know their child best, the law recognizes that:

- ◆ Parents must take a lead role in all decisions concerning placement and program plans for their children with disabilities;
- ◆ To secure the child's educational rights, it is the parents who can speak most effectively on the child's behalf, and
- ◆ Parental participation in decision-making, inclusion of children with disabilities and procedural safeguards for parent and child becomes a reality only when parents have a major responsibility for monitoring the way local and state educational agencies interpret and implement the law.

To quote from IDEA, the "purposes...that apply to this program" are to:

- ◆ Ensure all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;
- ◆ Ensure the rights of children with disabilities and their parents are protected;
- ◆ Assist states, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities, and
- ◆ Assess and ensure the effectiveness of efforts to educate children with disabilities.

To repeat, IDEA declares that "all children with disabilities have available to them...a free, appropriate public education." This means public schools must provide a program of "special education and related services designed to meet their (the child's) unique needs."

Charting the IEP process...

Identification

Often referred to as "child find," the parent or educator observes/identifies a student with learning difficulties.

Referral

Student may be referred for special education evaluation.



Referral Conference

School must get parent's approval before an individual evaluation is conducted.

Evaluation

Student is evaluated and results used to determine if the student is eligible for special education.

IEP Conference

An IEP (Individual Education Plan) is developed by parent and educator team.



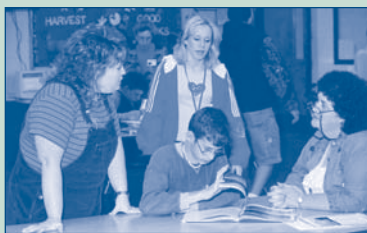
Educational Placement

Student's placement is decided by the IEP Team in the least restrictive environment.



Annual Review

A review of the student's progress and success in meeting the IEP goals.



Introduction

“A free and appropriate public education in the least restrictive environment is the heart and soul of free enterprise democracy. There is no better way to reduce welfare, poverty and public debt than to guarantee quality public education to every child. There is no better investment in family values.

The IDEA has worked for over 20 years. Like the ADA, it is sacred to the more than 49 million Americans with disabilities and their families. It is imperative that children with disabilities continue to have a level playing field in education – and that the role of their families in determining appropriate individualized educational programs not be weakened.” – Justin Dart (1930-2002)



This booklet is a companion to *A Parent’s Guide - Civil Rights/ Education*, commonly known as the “Bluebook.” Most recently revised and published by the Disability Rights Center (DRC) in 2006, the Bluebook covers all laws relating to the education of children with disabilities, but is directed primarily to the Individuals with Disabilities Act (IDEA). That Act generally covers four vital subjects for the school district and with the participation of the parent. Those subjects are:

Identification

- ◆ Referral

Evaluation

- ◆ Evaluation/IEP Meeting

Educational Placement

- ◆ Implementation of the IEP
- ◆ Annual Review

Free Appropriate Public Education (FAPE)

These areas of interest cover the many specific subjects detailed in the Bluebook. To learn more about the Bluebook and its value to parents or other interested persons, turn to page 12.

Identification

Location of children, ages 3-21, who *may be* eligible for services under IDEA begins with *Child Find*. The state is obligated to institute a plan which will identify, locate and evaluate all children with disabilities who need special education and related services.

The plan includes advertising and a continuing effort to locate these children. This obligation of the state extends to children who are suspected of having disabilities requiring special education, even though they are advancing from grade to grade. Child Find also extends to homeless children, in other words to all children who may have disabilities requiring special education in the state.

The child with a disability must then be *referred*. That referral may be made by the school district or any individual with information about the child. (A specific form to use for referral can be found in DRC's Blue-book). Following the referral process, a referral conference will be held to review all the information related to the student. The parents and persons with information about the child should attend this conference. Parents are active participants in this process.

Following referral, if the school district wishes to change the identification of a child with a disability, to begin evaluation or to change a child's placement, the district must notify the parents of any change in the child's program. The notice must be sufficiently clear to fully inform the parents of the process to be followed.

If parents do not understand the implications, they should contact the school or an outside party such as Disability Rights Center for a full explanation. If the district refuses to do any of these things, and the parents believe otherwise, the district must notify the parents of its reason for failure to act. Parents' right to pursue the process further will be explained in writing.



Evaluation

Following referral, and if the parents agree, the child must be evaluated to determine if the child with a disability has such a disability which harms the educational performance of the child, and the child also needs specially designed instruction (A more detailed explanation of the evaluation process can be found in the Blue-book).



A parent or the school district may initiate the request for a first evaluation. However, the parents must give their fully informed consent for any evaluation. If the initial evaluation is performed, the school district must base its evaluation on matters not confined to a single apparent disability.



In other words, the child should be evaluated for overall need of special education and related services under IDEA. This may include health, vision, hearing, social and emotional status, general intelligence and motor abilities.



Parents should not forget that the evaluation also includes related services, which may include assistive technology devices and services, so that the child can receive a free appropriate public education. Following evaluation, if the child is in need of special education and related services, a meeting known as the *Individualized Education Program (IEP)* conference will be held after proper notice to the parents and with the active participation of the parents.

A child with a disability means a child, age 3-21, evaluated in accordance with the rules and who, because of that, requires special education and related services. In order to be eligible for IDEA services, the child must fit into one of the following categories:

- ◆ Mental retardation;
- ◆ Hearing impairment;
- ◆ Speech or language impairment;

Evaluation

- ◆ Visual impairment, including blindness;
- ◆ Emotional disturbance;
- ◆ Orthopedic impairment;
- ◆ Autism;
- ◆ Traumatic brain injury;
- ◆ Other health impairment;
- ◆ Specific learning disability;
- ◆ Deaf/blindness, and
- ◆ Multiple disabilities.

There is a special evaluation procedure for specific *learning disabilities*. All disabilities, in order to be eligible for IDEA, must cause reduced benefit to the child's education. If the parents disagree with the evaluation by the school district, they may be entitled to a free evaluation by an outside source, that is, an *independent educational evaluation*.

Reevaluations are held to see if different educational or related services continue to be required, judging on academic achievement and functional performance, if the child requires such an evaluation. The reevaluation takes place no more than once a year unless the school district and the parents agree otherwise, but it must occur at least every three years.

It is recommended that parents fully understand the evaluation process and the *minimum components* that go into the evaluation. There are minimum requirements for evaluations, and the parent, if not fully informed, should seek outside help including other parents who have been through the process.

Educational Placement

The placement or location where the child will be educated is a result of the decision of the IEP Team. It must be a placement that is appropriate for the child to meet her/his unique needs.

The first thing to remember about an educational placement is that it is a placement in an educational program, and not a placement in a specific location (such as a particular room or a separate building). A child may be placed in the regular classroom (and must be, if possible) as long as the child's needs can be met in that location. The placement is determined annually by the IEP Team and must reflect the child's progress so as to determine the least restrictive placement.

The second thing to remember is that the child must, if possible, be placed in the least restrictive environment, hopefully, the regular classroom. In any case, the placement must be based on the IEP and be as close to the child's home as possible, unless otherwise agreed. This is interpreted to mean that the child must be educated in the school that the child would attend if she/he had no disability, unless the parent disagreed.

In determining least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of service. A child with a disability is not removed from education in an age appropriate regular classroom solely because of needed modifications in the general education curriculum. The student is entitled to the modifications necessary to provide FAPE.

DRC's Bluebook shows the continuum from least restrictive to most *restrictive*. Residential settings, home schooling and transfers are also explained in the Bluebook. Private and charter schools are also discussed.



Educational Placement

The parents should remember that the two fundamental principles of IDEA are that a child receives a free appropriate public education and that the student does so in the least restrictive environment. This placement must be as close to the child's home as possible unless otherwise agreed.

It must be in the school which the child would attend if she/he did not have a disability, again, unless otherwise agreed. Also, nonacademic and extracurricular services are included in the discussion of a least restrictive environment. That includes meals, recess periods, and the services and activities necessary to afford children with disabilities an equal opportunity for participation.

Of course, the least restrictive environment is the school where a child can receive an *appropriate* education. It is necessary that the school district and parents (along with any outside help they require) reach this decision in the best interest of the child.

Free Appropriate Public Education

A free appropriate public education (FAPE) is one provided at no cost to the parents in a public setting (although private schools may be covered), and appropriate to the child's particular needs based on evaluation and the IEP Team's determinations. It must be provided at public expense under public supervision and direction.

It must meet the standards of the state education agency as well as requirements of IDEA. The state is obligated to provide proper preschool, elementary school and secondary school education in the state involved and all the education must meet the requirements of the IEP. Requirements for highly qualified personnel to meet the child's needs are detailed in DRC's Bluebook.

Parents should recognize that the Bluebook describes the statute, IDEA, as a *process* or a means to reach the ultimate goal of a free appropriate public education. These processes include Child Find, referral, evaluation, IEPs, placement decisions, transition, qualified personnel and others. The topics discussed here – identification, evaluation, educational placement, and free appropriate public education – are the substantive parts of the statute.

The processes described in the Bluebook are important and must be followed in order that the child have an opportunity for FAPE. The law is clear that the district must comply with the procedures of IDEA (in other words, the processes outlined in the Bluebook) and must develop an individualized education program to enable the child to receive educational benefits.

As to what constitutes an *appropriate* education is often a matter of dispute. As IDEA has been amended over the years, courts now tend to hold that there must be planning for indepen-



Free Appropriate Education

dence and self sufficiency in teacher training to ensure that children with disabilities have the skills and knowledge necessary to enable their transition to post secondary or higher education, work or independent living.

Should a dispute arise between a district and the parents, the parents have a full array of rights from the infant and toddler stage until graduation. The Act also provides for a *state complaint procedure* for parents who believe the school's action is inappropriate. Most times there are good results for the child when parents and the school district work cooperatively together, to the extent possible. But, if a complaint is to be filed, parents are encouraged to follow the procedures outlined in the Bluebook.

Overall, parent's rights are covered by the "due process procedure." To better understand this procedure, which involves mediation, complaint, hearing and appeal, parents are encouraged to study the portions of the Act and the Bluebook pertaining to due process.

The Act's mediation features are now broad and can be helpful to parents. The parent is never excluded from filing a due process complaint and proceeding to a hearing is the parent's choice. However, mediation, as described in the Act and in the Bluebook, is often preferable and effective for parents and the child with disabilities.

Before entering into the administrative complaint process, it would be helpful for parents to seek assistance from an advocacy group or other parents who have experienced the same difficulties.

Infants and Toddlers

For parents of a child under the age of three who has been diagnosed with a disability or when an undiagnosed disability is suspected, the most important thing to do is obtain early intervention services for the child so they will be fully ready to participate in kindergarten/school/life. Parents also need to educate themselves about their child's disability or delay, effective educational methods, different types of therapies and medical treatments, assistive technology devices, financial assistance and supportive organizations (other parents) to get started.

The Program for Infants and Toddlers with Disabilities (Part C of IDEA) is a federal grant program that assists states in operating a state-wide program of early intervention services for infants and toddlers with disabilities (birth through 36 months) and their families. Administered by the DHS Division of Developmental Disabilities, *First Connections* is the State Early Intervention (EI) Service in Arkansas.

Referral – Parents have a right to a timely *referral* meeting with their Services Coordinator (First Connections) to plan a required **multidisciplinary evaluation** of their child, utilizing medical records, and including family information and desires such as how the family communicates with the child. *First Connections Services Coordinators* actually make the initial contact with the parents after referrals from the parents, physicians, nurses, day care, etc.

Eligibility – Eligibility and service needs are determined from *evaluation* results. Currently, the child must have at least a 25 percent delay in one or more areas – physical, including hearing and vision; cognitive; communication; social or emotional, and adaptive skills. (NOTE: The eligibility criteria are subject to change.) If the child is found eligible for services then the team (including parents) develops an **Individual Family Service Plan (IFSP)**. If the child is



not found eligible and the parent disagrees with the decision, or any decisions along the way, the parent has a right to file a complaint, request mediation or fair hearing to resolve the complaint.

Individualized Family Service Plan (IFSP) – The IFSP should be in writing and contain statements regarding:

- ◆ Infant's and toddler's present level of development;
- ◆ Family's resources, priorities, concerns;
- ◆ Specific individualized early intervention services;
- ◆ Natural environment where early intervention services will be provided;
- ◆ Beginning date, anticipated length, duration and frequency of services;
- ◆ Service coordinator responsible for the implementation the plan, and
- ◆ Steps to support transition to preschool.

The IFSP must be evaluated once a year and the family provided with a review of the plan at every six months.

Transition – First Connections must ensure a smooth transition to preschool, school or other appropriate services including:

- ◆ Explanation of how families will be included in the transition plan;
- ◆ Notification to local school districts, and
- ◆ The District must hold a conference with agreement of the family no later than 90 days before the child is eligible for special education services

If the child is found not eligible for special education services, the District must hold a conference with agreement of the family to discuss appropriate services the child may receive.

Funding – Services are to be provided at no charge to the parent. First Connections is considered a payer of last resort. This means the Services Coordinator will work with the parent to secure funding for needed services such as private insurance or Medicaid, before First Connections will actually pay for services.

Procedural Safeguards – Should parents disagree with decisions made regarding service for their child, they may file a complaint with the DHS Division of Developmental Disabilities.

Contact Information – Early Intervention Services (First Connections) 1-800-643-8258 Website: <http://www.arkansas.gov/dhhs/ddds/FirstConn/index.html>

Disability Rights Center: 1-800-482-1174 v/tty, or 501-296-1775 v/tty, fax 501-296-1779

Arkansas Parent Training and Information Center/Arkansas Disability Coalition: 1-800-223-1330 v/tty, 501-614-7020 v/tty, fax 501-614-9082

Other Statutes

Section 504 of the Rehabilitation Act and Title II of the ADA

Section 504 and Title II are civil rights statutes which prohibit discrimination against persons with disabilities to participate in government programs, including public school services. Section 504 does require that the program in question receive federal financial assistance – as all schools do.

The definition of disability in both statutes is broader than that of IDEA. Therefore, a child may be eligible to have the protection of these statutes even if she/he does not qualify for IDEA services.

At the same time, Section 504 and Title II do not provide for all the procedural protections and/or all the services as provided by IDEA. Children who qualify for protection under these statutes are outlined in the Bluebook, and the regulations clearly provide for a free appropriate public education and should be kept in mind in the case of any child with a disability, of an appropriate school age, who requires special education.

No Child Left Behind (NCLB)

The NCLB is essentially a statute that requires all schools to be accountable for reaching certain standards provided in the Act as explained in the Bluebook. There are penalties for failing to reach these standards, including allowing students to transfer from failing schools.

The NCLB is similar to IDEA in that it includes requirements for parental involvement, qualified teachers, supplemental services and after school tutoring. It is an essential part of the group of statutes protecting children with disabilities of school age.

Family Educational Rights and Privacy Act (FERPA)

FERPA contains the same law as IDEA regarding privacy rights for parents and their children with disabilities. It also provides right to access to student's records and remedies if that access is denied. Readers are encouraged to review inform-



Other Statutes

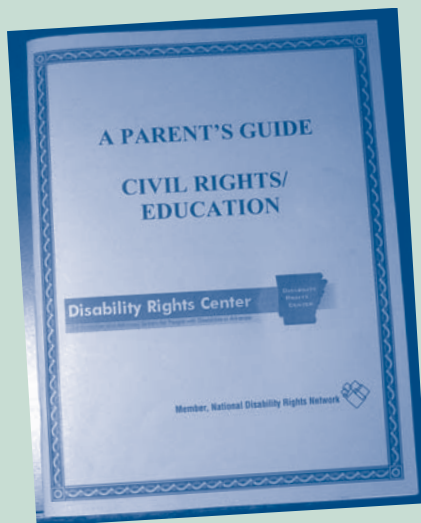
ation in the Bluebook to determine exactly what the school district's responsibility is under this Act and under IDEA.

Freedom of Information Act (FOIA)

The FOIA is explained in the Bluebook. However, it should be literally used inasmuch as parents have a perfect right to access to their children's records, and, at the same time, are barred from examining other students' records by FERPA and IDEA.

When reviewing the Bluebook, parents may continue to have questions as to the meaning of various statutes protecting the rights of children with disabilities. Those parents are encouraged to contact outside resources (see Resource Directory, Appendix II to Bluebook). Disability Rights Center stands ready to answer such questions and aid in securing a free appropriate public education for all children with disabilities in Arkansas.

The DRC Bluebook



A Parents Guide Civil Rights/Education is a DRC publication designed to provide a comprehensive yet easy to understand summary of special education laws. Commonly known as the "Bluebook", copies are available to parents by contacting DRC or visiting its website at www.arkdisabilityrights.org. A companion to the Bluebook, this booklet serves as an introduction to IDEA. We hope both will be helpful to you.

The DD Network

Serving Arkansans with developmental disabilities

Made up of three “sister” agencies – the Arkansas Governor’s Developmental Disabilities Council, Partners for Inclusive Communities and the Disability Rights Center – the DD Network is a relatively new addition to the state’s developmental disabilities landscape. A natural extension of the desire to improve the lives of individuals with disabilities and their families, the agencies have joined forces on several “cooperative” ventures, including this booklet and the annual DD Conference. The Network brings its combined expertise to bear on such pressing issues as improved nutrition and physical fitness, improved educational opportunities, crime prevention, community inclusion and creating a more positive perception of people with developmental disabilities.

Disability Rights Center (DRC) is the Protection and Advocacy (P&A) system and Client Assistance Program (CAP) for people with disabilities in Arkansas. A private, nonprofit corporation, DRC is part of a nation-wide network of Congressionally mandated legally-based disability rights agencies. Available at no charge, DRC’s services include eight federally-funded programs that advocate for and protect the rights of Arkansans with disabilities. In addition to providing individual services, DRC works in collaboration with other agencies and organizations concerned with the rights of people with disabilities.

Arkansas Governor’s Developmental Disabilities Council (DDC) is a state agency. Funded by the Administration on Developmental Disabilities (ADD), it consists of persons with developmental disabilities, family members, directors of state agencies that serve people with disabilities and representatives from nonprofit and private organizations that provide service and support for people with disabilities. Operating under the Developmental Disabilities Assistance and Rights Act, the Council’s primary objective is to foster the independence and productivity of people with disabilities and to ensure their integration and inclusion in all aspects of their lives.

Partners for Inclusive Communities (Partners) is the Arkansas University Center for Excellence in Developmental Disabilities Education, Research and Service (UCEDD). Also funded by (ADD), Partners is part of a national network of UCEDDs which conduct research and provide education, training, technical assistance, information and services to individuals with disabilities, their families, students and professionals involved with disability-related services. Like DRC and DDC, Partners is committed to collaborating with multiple agencies and organizations in the support of inclusion of individuals with disabilities.

To learn more about the DD Network’s agencies and activities, go to their individual websites at:

Disability Rights Center – www.arkdisabilityrights.org

Arkansas Governor’s Developmental Disabilities Council – www.ddcouncil.org

Partners for Inclusive Communities – www.uams.edu/uap

We Will Remember You



In Memoriam - 1937-2007

With great respect for Bill Cain, the DD Network dedicates this Parent's Guide to him. We thank him for his valuable contribution to both this booklet and the many other DRC publications. As the Disability Rights Center's General Counsel for 15 years, Bill provided honest and fair counsel to parents of children with disabilities, to professionals and to the DRC staff. He was a good friend to children, an admired lawyer, writer and colleague and he will be missed. He was lots of fun as well. Bill, although your hall practice has ceased, your legacy lives on. With many fond memories.

1977 - 2007



*Celebrating 30 Years of Service
to Individuals With Disabilities*

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